

## REMARKS

Claims 1-40 are pending in the application. Claims 1-40 are rejected. More particularly and in accordance with the item numbering therein, the Office Action has:

In Items 2 and 3, rejected independent claims 1 and 21 as being anticipated by Lange (US Patent 6,321,212);

In Item 4f, rejected claims 2 and 22, in Item 4g, rejected claims 3 and 23, in Item 4i, rejected claims 5 and 25, in Item 4k, rejected claims 8 and 28, in Item 4m, rejected claims 13 and 33, and in Items 4n and 4n(v-ix), rejected claims 14-20 and 34-40, all as being anticipated by Lange at Col. 6, lines 46-67; Col. 7-Col. 8, line 17; and

In Item 4h, rejected claims 4 and 24, in Item 4j, rejected claims 6 and 26, in Item 4j(i), rejected claims 7 and 27, in Items 4l and 4l(i-iv), rejected claims 9-12 and 29-32, all as being anticipated by Lange at Col. 8, lines 4-64.

Regarding Items 2 and 3, Applicant respectfully submits that claims 1 and 21 are not anticipated by Lange.

Lange describes a system and method in which demand based adjustable return (DBAR) contingent claims are traded. Lange Abstract. The function for allocating returns to these contingent claims is called the Demand Reallocation Function (DRF). Lange, Col. 8, Lines 17-20. According to the Lange specification, the DRF involves reallocating returns to investments in each state after the outcome of the observable event is known in order to compensate successful investments from losses on unsuccessful investments (after any transaction or exchange fee). Lange '212, Col. 8, lines 20-24. The returns to successful investments are determined by the *total and relative amounts* of all investments placed on each of the defined states for the specified observable event. Lange '212, Col. 7, lines 28-30. Lange further explains that a DRF has the property that, upon the occurrence of a given state *i*, investors who have invested in that state receive a payout per unit invested equal to (a) the total amount traded for all the states less the transaction fee, divided by (b) the total amount invested in the occurring state. Lange, '212, lines 42-47. Thus, Lange describes a payout that depends at least on the total amount traded for all of the states.

Because the payout depends on the total amount traded for all the states, the

changes in the return for investments in one state affect the return on investments in another state in the same distribution of states for a group of contingent claims. Lange '212, Col. 9, lines 7-10. Thus, the trader's returns, in Lange, depend not only on the actual outcome of the real-world, observable event, but also on trading choices from among the distribution of states made *by other traders*. Lange '212, Col. 9, lines 10-13, Col. 36, lines 42-46. The Lange specification indicates that the high costs of traditional order matching and principle market making market structures are reduced substantially due to this dependency. Lange '212, Col. 9, lines 19-24.

Applicant thus submits that Lange does not teach or describe the limitation "paying off, using the frozen first and second investor funds, one of the first and second investor upon expiration of the contract," recited in claim 1 and 21, at least because, in Lange, the payoff comes from the total amount invested in all the states by all of the other traders. In Applicant's invention, the payoff comes from the funds of the first and second investor that are frozen at the beginning of the trade. No funds are aggregated in Applicant's invention unlike the aggregation that occurs in Lange. Lange '212, Col. 9, lines 37-44. Aggregating funds to create a pool from which payoffs are computed creates different results compared to the simple pairing of investors in Applicant's system. In particular, the payoff for an investor in simple pairing is not affected by the investments or payoffs of other investors in the trading system.

Furthermore, Lange does not meet the limitation "matching the contract with a second investor thereby creating an active contract," because Lange teaches away from order-matching systems. Lange teaches that matching systems are too expensive or have unmanageable risks or both. Lange '212, Col. 9, lines 20-23, Col. 8, lines 42-46, Col. 3, line 51-Col. 5, line 42.

The Office Action has alleged that Lange at Col. 10, lines 43-67 teaches the step "associating a contract with a first investor, wherein the contract is based on at least one underlying commodity having a market value, wherein the first investor does not hold the underlying commodity or agree to buy or sell the underlying commodity and wherein the first investor deposits funds in an account in an amount equal to a maximum potential loss to the first investor," as recited in claim 1. However, nothing in the cited portion of the reference teaches the associating of a contract with a first investor or that the first investor

deposits funds in an account equal to the amount of the potential loss of the first investor. Instead, the cited portion teaches that investments of value units are accepted from *a plurality of traders* in the defined states, and that the payout is responsive to the *total number* of value units invested in the defined states. If any association is made in the Lange system, it is between a trader and a defined state. Such is not the case in the present invention.

The Office Action has further alleged that Lange at Col. 6, lines 43-67 and Col. 10, lines 43-67 teaches the step “matching the contract with a second investor thereby creating an active contract, wherein the second investor does not hold the underlying commodity or agree to buy or sell the underlying commodity, and wherein the second investor deposits funds in an account in an amount equal to a maximum potential loss to the second investor,” as recited in claim 1. The first cited portion of the Lange reference describes that the payout of a contingent claim depends on the outcome of an observable event with more than one possible outcome and who the intended users are. The second cited portion of Lange is the same as that referred to above. No mention of “matching the contract with a second investor...wherein the second investor deposits funds in an account equal to that investors maximum potential loss” is discussed in these sections.

The Office Action has yet further alleged that Lange at Col. 7, lines 4-62 teaches the step “at least temporarily freezing the first investor funds and the second investor funds associated with the contract,” as recited in claim 1. The cited portion of Lange describes the trading period of contingent claims, the process by which returns in Lange are finalized, the meaning of contingent claims, and the definition of investment. No where in the cited portion does Lange describe the act of freezing the specific funds of the first and second investor, where those funds are used to settle the trade between the first and second investor. Lange does describe that returns are set by using losses from unsuccessful investments to pay for successful ones. However, the returns of the successful investments are determined by the total and relative amounts of all investments placed on each of the defined states for the specified observable event. Lange ‘212, Col. 7, lines 27-30. This is not the same as using the frozen funds of the first and second investor to settle the trade, upon the expiration of the contract. In the present invention, the payoff amount of a successful investment is certain. In Lange the payoff amount of a successful investment is less than certain because it is

dependent on the investments of all of the other counterparties. Lange, ‘212, Col. 40, lines 9-14. Lange specifically states that all traders for a group of DBAR contingent claims depending on a given event become counterparties to each other, leading to a mutualization of financial interests. Lange ‘212, Col. 9, lines 49-52.<sup>1</sup> No such mutualization of financial interests is present in Applicant’s invention.

The Office Action has also alleged that the step “determining which one of the first and second investor is to receive a payoff based on the market value of the underlying commodity upon expiration of the contract in relation to one of a target price and a target price range,” recited in claim 1, is described in Lange at Col. 6, lines 46-67 and Col. 7-Col. 8, line 17. However, the cited and other portions of Lange indicate that Lange does not actually payoff particular investors; instead it pays off particular states which have been defined to exhaust the possible outcomes of an event. Lange, Col. 7, lines 10-12, Col. 16, line 65-Col. 17, line 1. Because of the mutualization of financial interests in Lange, there is no necessary connection between a possible outcome and a particular investor.

The Office Action has further alleged that the step of “paying off, using the frozen first and second investor funds, one of the first and second investor upon expiration of the contract, wherein expiration of the contract is based on at least one of a deviation from a target price range and a specified maturity date,” recited in claim 1, is found in Lange at Col. 6, lines 46-67 and Col. 7-Col. 8, line 17. However, the cited and other portions of Lange do not teach that the pay off uses the funds of the first and second investor who are matched via the contract. Lange ‘212, Col. 8, lines 43-45. Instead, Lange teaches that the payoff uses and depends on the funds of all of the traders who invested in all of the defined states, with no matching at all among or between traders. Lange ‘212, Col. 8, lines 43-45. This means that a payoff, in Lange, does not simply transfer funds from the first investor to the second investor or vice versa, but instead reallocates funds from all traders. The present invention performs no such reallocation.

Therefore, Lange fails to teach each and every limitation of claim 1 and, for the same reasons, Lange fails to teach each and every limitation of claim 21. Therefore,

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<sup>1</sup> In fact, the canonical DRF in Lange at col. 26, lines 52-55, appears to be quite similar to the payout in a parimutuel betting system.

Lange does not anticipate claims 1 and 21.

Regarding items 4f, 4g, 4i, 4k, 4m, 4n, 4n(v-ix), in which claims 2, 22, 3, 23, 5, 25, 8, 28, 13, 33, 14-20, and 34-40 are rejected, Applicant submits that these claims are allowable at least because the independent claims from which they depend are allowable. Additionally, Lange fails to teach the limitations "wherein the payoff is selectively transferred to one of the first and second investor," in claims 2 and 22, "wherein the payoff is calculated and transferred to one of the first and second investor," in claims 3 and 23, "wherein the fixed lump-sum payoff is transferred to one of the first and second investor," in claims 5 and 25, "wherein the fixed lump-sum payoff is transferred to one of the first and second investor," in claims 8 and 28, "wherein a payoff is calculated and transferred to one of the first and second investor," in claims 13 and 33, 14-20, and 34-40. Lange fails to teach these limitations because, in Lange, the payoff based on the distribution of investments among a plurality of states from a plurality of traders. Lange, Col. 36, lines 42-46.

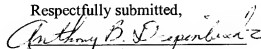
Regarding items 4h, 4j(i) and 4l and 4l(i-iv), in which claims 4, 24, 6, 26, 7, 27, 9-12, and 29-32 are rejected, Applicant submits that these claims are allowable at least because claims 3 and 23, 5 and 25, 8 and 28 are allowable.

### CONCLUSION

Having addressed each and every rejection of the claims, Applicants believe that the application is in condition for allowance, which is respectfully requested.

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